

Before the
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D.C. 20554

ORIGINAL

In the Matter of)

)
 Application of BellSouth Corporation)
 BellSouth Telecommunications, Inc.,)
 and BellSouth Long Distance, Inc.,)
 for Provision of In-Region, InterLATA)
 Services in South Carolina)

CC Docket No. 97-208

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

TO: Chief, Common Carrier Bureau

REPLY COMMENTS OF PILGRIM TELEPHONE, INC.

Pilgrim Telephone, Inc. ("Pilgrim"),¹ pursuant to the Public Notice released September 30, 1997, in CC Docket No. 97-208, hereby files its Reply Comments in the above-referenced proceeding.² Pilgrim files these Reply Comments to refute the claims made by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively, "BellSouth"), in the Brief in Support of Application by BellSouth for Provision of In-Region, InterLATA Services in South Carolina ("Section 271 Brief") that BellSouth is providing access to its operation support systems ("OSS") sufficient to allow competitive telecommunications service providers "to perform traditional OSS functions . . . in substantially the same time and manner as BellSouth." Section 271 Brief at 22. In

1. Pilgrim is an interstate interexchange carrier providing common carrier services pursuant to tariffs on file with the Commission. Pilgrim Tariff FCC No. 1, effective March 7, 1995, and previous versions. Pilgrim offers a variety of common carrier services, including 1+ (where available), collect calling, 0+ (generally via 800-number access), and teleconferencing services; Pilgrim also provides a number of enhanced and/or information services, including specialized teleconferencing, voice mail, voice store and forward, and information or entertainment services (collectively, "Pilgrim's services").

2. Pursuant to the Public Notice, which established a reply comment date of November 14, 1997, these Reply Comments are timely filed.

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Pilgrim's experience, which involves attempting to obtain numerous billing and collection services from BellSouth in a form and manner identical to that BellSouth provides for itself and others, BellSouth does not satisfy the checklist requirement that it provide nondiscriminatory access to its OSS functions. As such, BellSouth's Application to provide in-region, interLATA services in South Carolina should be denied. In support of which, Pilgrim respectfully submits the following:

As set forth at note 1, Pilgrim is a competitive telecommunications service provider. Over the last several years, Pilgrim has attempted to obtain from BellSouth billing and collection services necessary to the provision of Pilgrim's Services. At various times, Pilgrim and BellSouth have been parties to billing and collection agreements. These agreements have been presented to Pilgrim on essentially a take-it-or-leave-it basis and are basically contracts of adhesion.³ Pilgrim, having no feasible alternative, has entered into such contracts.

BellSouth may not commence providing the in-region, interLATA services it seeks to offer until it, *inter alia*, provides nondiscriminatory access to its network elements, including OSS functions, and its databases necessary for call routing and completion.⁴ The Commission has held that "in order to meet the nondiscriminatory standard for OSS, an incumbent LEC must provide competing carriers access to OSS functions for . . . billing

3. Pilgrim acknowledges that BellSouth engages in some cosmetic negotiation prior to imposing its stock billing and collection contract terms. The issues that BellSouth is willing to "negotiate," however, are only those marginal issues that tend to have no impact on effective competition. As to contract terms that may have such an effect, BellSouth insists that competitive providers play the mountain to BellSouth's Mohammed.

4. 47 U.S.C. § 271(c)(2)(B)(i),(x); *see also Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Mem. Op. and Order, FCC 97-298, released August 19, 1997, at 70-78 ("Ameritech Order").

[and collection] that is equivalent to what it provides itself"⁵ The Commission specifically stated that "examination of a BOC's OSS performance is *integral to our determination* whether a BOC is providing all of the items contained in the competitive checklist."⁶

Any examination of a BOC's OSS performance must also take into account the inherent competitive advantage available to ILECs. These inherent advantages arise from the facts that ILECs provide all telecommunications service customers with their initial dial tone and that ILECs have access to all customer calling data and customer records. Practical advantages of these effects include immediate access to the customer without the customer having to take the affirmative step of dialing to the ILEC's platform or dial tone, exclusive access to abbreviated calling patterns such as *-codes and #-codes, the ability to provide abbreviated dialing patterns, and the instant ability to access all customer records and blocking requests. Thus, equal contract terms and conditions between an ILEC and its

5. *Ameritech Order* at 72-73. Congress, the courts and the Commission, in identifying billing and collection as a fundamental component of a BOC's OSS, have identified the essential, lifeblood nature of billing and collection. The crucial quality of billing and collection is also evident from the Petitions for Rule Making pending before the Commission requesting, nearly pleading, that the Commission impose affirmative requirements that BOCs and other LECs provide billing and collection. *MCI Telecommunications Corp. Petition for Rule Making Regarding Local Exchange Company Requirements for Billing and Collection of Non-Subscribed Services*, RM-9108, Public Notice, rel. June 25, 1997; *LCI International Telecom Corp. and Competitive Telecommunications Association Petition for Expedited Rulemaking to Establish Reporting Requirements and Performance and Technical Standards for Operations Support Systems*, RM-9101, DA No. 97-1211, Public Notice rel. June 10, 1997; see also *Common Carrier Bureau Operators Support System Forum*, May 29, 1997; *Public Forum on Local Exchange Carrier Billing for Other Businesses*, Tuesday, June 24, 1997. It is manifestly evident that a fully competitive telecommunications market could not exist without nondiscriminatory BOC provision of billing and collection. It is equally evident that the promise of competitive telecommunications providers being enabled by the 1996 Act will come to naught absent the requirement that BOCs provide billing and collection services.

6. *Ameritech Order* at 72 (emphasis added).

competitors do not guarantee non-discrimination and the absence of self-dealing. As a result, in order for there to be truly equivalent opportunities for BOCs and their putative competitors to offer telecommunications services, a BOC may have to offer services to its competitors that it does not use or require itself.

ILECs impose restrictions and requirements that can be met only by the ILEC itself, or that require competitors to buy additional services from the ILEC that would otherwise be unnecessary. ILECs also impose restrictions and requirements that seriously inconvenience competitors' customers while imposing no noticeable hardship on the ILECs' customers. For example, in the course of performance under the BellSouth-Pilgrim billing and collection agreements, BellSouth has attempted, and succeeded, in limiting the services offered by Pilgrim for which BellSouth will provide billing and collection. BellSouth has attempted, at various times, to limit Pilgrim's ability to obtain billing and collection on the basis of (i) the content of the speech engaged in by customers using Pilgrim's common carrier services, (ii) dialing patterns used by Pilgrim to provide such services, or (iii) the advertising and marketing Pilgrim employs to promote its services. In particular, dialing restrictions and bill presentation limitations can be devastating, as the ILEC does not face the same or similar limitations. BellSouth provides area code 500 and 700 billing for AT&T, but does not do so for other carriers.

Furthermore, when Pilgrim has balked at submitting to all of BellSouth's demands, BellSouth responds by threatening to terminate providing all billing and collection services to Pilgrim. When responding to Pilgrim inquiries as to the justification(s) for BellSouth's positions, or attempts to discern why Pilgrim is being treated differently from other carriers for whom BellSouth provides billing and collection services, BellSouth insists on dealing

directly with Pilgrim, and not with Pilgrim's attorneys. BellSouth has also repeatedly insisted upon impermissible burdensome and anticompetitive conditions, such as the disclosure of sensitive proprietary information, including details related to marketing and provisioning. *See Marcus Cable Assocs. v. Texas Utils. Elec. Co.*, P.A. No. 96-002, Declaratory Ruling and Order, DA 97-1527, released July 21, 1997.

BellSouth has made the blanket assertion that it is not obligated to provide billing and collection services for Pilgrim under Section 271 or any other provision of law. The Commission's Interconnection Order, the Eighth Circuit's review of same, and the Commission's Ameritech Order each reveal BellSouth's assertion to be fallacious. BellSouth refuses to provide billing and collection for some services regardless of their lawful nature, even when the services are explicitly authorized by statute, such as via written presubscription agreements.⁷

Nevertheless, BellSouth maintains that it provides billing and collection service to Pilgrim (and all other competitive telecommunications service providers) on a nondiscriminatory basis. A substantial written record of correspondence between BellSouth and Pilgrim overwhelmingly contradicts this claim.⁸ Pilgrim has presented BellSouth with numerous requests for specific billing and collection services that BellSouth provides to itself and its other customers. BellSouth has repeatedly failed to reply to Pilgrim's numerous written requests. In fact, at one point BellSouth refused, for over one year, to return Pilgrim's

7. In fact, BellSouth has made the bold and broad statement that "BellSouth will not agree to bill 'all lawfully permitted' telecommunications services."

8. Upon request, Pilgrim will submit copies of such correspondence in a separate filing requesting confidential protection for same pursuant to Sections 0.457 and 0.459 of the Commission's Rules, 47 C.F.R. §§ 0.457, 0.459.

phone calls or respond to Pilgrim correspondence. Only recently has BellSouth begun to respond to Pilgrim's correspondence, which, not surprisingly, corresponds with the pendency of BellSouth's Section 271 Application.⁹ Even so, BellSouth's response are deficient, failing to respond to a number of Pilgrim's requests and refusing to fully explain billing options, such as those used by AT&T. Pilgrim has even requested that BellSouth join Pilgrim in mediating all the above issues in order to establish a mutually satisfactory billing and collection relationship between the parties, to which BellSouth has not formally responded.

BellSouth also bases some of its refusal to provide Pilgrim with billing and collection services by referring to the Telephone Disclosure and Dispute Resolution Act, 47 U.S.C. §228 ("TDDRA"), and Commission's rules promulgated thereunder, 47 C.F.R. §64.1603(c).¹⁰ Each time, however, BellSouth has been overly restrictive in its attempts to limit the services or access methods Pilgrim wishes to offer. In fact, BellSouth often denies Pilgrim the opportunity to use access methods explicitly permitted by TDDRA.¹¹

9. In fact, on two separate occasions, BellSouth has set deadlines for itself to provide Pilgrim with drafts of new billing and collection agreements or to respond to Pilgrim inquiries on the day after a filing deadline in BellSouth's Section 271 proceedings. Apparently, BellSouth seeks to dangle the carrot in front of Pilgrim long enough for the Commission to see it, but to whack Pilgrim with a stick when the Commission is no longer looking.

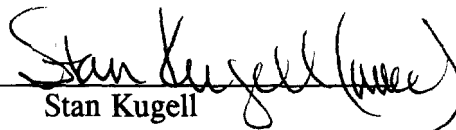
10. Pilgrim acknowledges that there are some legitimate items of dispute between Pilgrim and BellSouth. Pilgrim's stance in this Reply does not rely on those issues, or BellSouth's position on same.

11. BellSouth's refusal to provide service takes two forms. For some services, BellSouth refuses to provide service, and has ignored Pilgrim's request for mediation. As to other services, BellSouth has ignored or refused to answer Pilgrim's repeated written and oral requests for service. In one such case, Pilgrim has been making and renewing the same service request, in writing and orally, since November 1996. BellSouth has never responded. Pilgrim will provide evidence of this state of affairs pursuant to its submission of information for which it is requesting confidential treatment. *See supra*, note 8.

BellSouth falls far short of the requirement that it provide nondiscriminatory access to its OSS functions and its proprietary databases. BellSouth refused to respond to Pilgrim's 1996 correspondence seeking to establish a type of billing and collection services that BellSouth provides to itself and others, and seeking BellSouth's guidance on methods of billing such services. BellSouth impermissibly demands proprietary Pilgrim information and marketing materials and attempts to prohibit Pilgrim from employing counsel to deal with BellSouth on Pilgrim's behalf. BellSouth refuses to provide Pilgrim with nondiscriminatory access to BellSouth's billing and collection services. In sum, BellSouth refuses to provide Pilgrim with the same service it provides itself or its customers, particularly AT&T. Therefore, BellSouth's Section 271 Application must be denied.

Respectfully submitted,

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